SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 163

JOSEPH OBERGFELL, PETER BOLLENBACHER, ALBERT J. KUGLER, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL AND SOFT DRINK WORKERS OF AMERICA, ET AL.,

Petitioners,

vs.

WILLIAM GREEN, FRANK MORRISON, JOHN COEFIELD, THE AMERICAN FEDERATION OF LABOR AND THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS, ET AL.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

Appellate Court Misconceived the Issues in the Case.

The lower court states:

> "The essence of the dispute was the right of the Brewery Workers on the one hand and of the Teamsters on the other to organize particular workers for collective bargaining purposes" (Op. p. 5).

This misstates the issues of the case. The record clearly shows and the lower court found as a fact that 98% of all beer drivers are *already* organized in the Brewery Workers Union and have been for over 50 years. These men are working under 300 closed shop collective bargaining agreements which were produced in the lower court and are part of the record. There was no issue in the trial as to the right of either the Brewery Workers or the Teamsters to organize beer drivers. For 50 years they have all been organized. The real issue in the case presented the question of the authority of the Federation, under its constitution, to transfer these 15,000 beer drivers already organized and holding membership in the Brewery Workers Union to the Teamsters Union in breach of the A. F. of L.'s contract with the Brewery Workers and the Teamsters Agreement of 1915 with the Brewery Workers. The trial court found as a fact that the Brewery Workers Union's trade jurisdiction was protected by the constitution of the Federation by virtue of the provision of Section 11 of Article IX (Finding of Fact 14, R. 1674-5), and that the Federation's order of transfer would cause these 15,000 beer drivers to lose sick, death and out-of-work benefits in their local unions and that these benefits ranged from $25 to $2500 (Finding of Fact 56, R. 1688). It further found that as between the Teamsters and Brewery Workers the 1915 Agreement was valid and controlled. It was to protect these contract and property rights that the Declaratory Judgment and injunction were granted. The Court of Appeals states the issue as if the Brewery Workers and the Teamsters were contending against each other as to the right to organize the "unorganized" beer drivers in a pure jurisdictional rivalry.

This case does not involve a jurisdictional dispute as that term is popularly understood, that is, a dispute between two unions to do a certain type of work, *i. e.*, a dispute

between carpenters and machinists as to which union will erect machinery or a dispute between unions in an attempt to organize the "unorganized worker". The real issue was the transfer of the 15,000 individual beer drivers, against their will, from the Brewery Workers Union to the Teamsters by an order of the A. F. of L. This transfer confiscates their property rights in their local unions and in the international. It destroys and dismembers the international and local unions.

II.

The So-called "Decision" of the A. F. of L. Results in the Transfer of Men, Against Their Will, From One Union to Another.

Petitioners complain not merely that the "decision" of the A. F. of L. was beyond its power under its constitution but that if carried out by the A. F. of L. and the Teamsters Union it forces the transfer of men from the union of their choice to another. Counsel for respondents at the trial admitted it was an order of transfer. He admitted it again and again (R. 1544, 1568-70).

We remind the Court that both the A. F. of L. and the Teamsters did not stop with a mere declaration of rights but undertook, by every means in their power, to put the "decision" into effect and coerce a transfer of beer drivers from the union of their choice to another. The A. F. of L. and the Teamsters still want to put the so-called "decision" into effect. Thus, after the court below stayed its mandate during certiorari, respondents moved to send it down forthwith on the ground that the injunction prevented the Executive Council from "performing its duties" (R. 2831) and placed the A. F. of L. "under drastic and unwarranted restrictions" (R. 2831). If the decision was simply a declaration of jurisdiction, what "duties" were there

to perform? As the injunction simply restrained the A. F. of L. and the Teamsters from carrying out the "decision" of the A. F. of L., what respondents obviously wanted was to be able to carry out and enforce the decision, i. e., force "compliance", in the words of William Green, President of the A. F. of L. (R. 1683, Findings of Fact 38 and 39). Hughes, Secretary-Treasurer of the Teamsters Union, a respondent herein, was more frank about it. In a public speech on the floor of the Teamsters Convention, October 12, 1939, within a week after the injunction was granted, he said:

> "I am going right along regardless of your court and regardless of your injunction, and I am going to get these brewery drivers" (R. 2693).

In the Reply filed below (R. 2830) respondents admit that the result of non-compliance will be expulsion from the A. F. of L. They disclaim, however, being responsible for such an expulsion.

We have already referred to Findings of Fact 38 and 39 (R. 1683), undisturbed by the court below, to the effect that immediately after the "decision" in 1933, Green, as president of the A. F. of L. notified all affiliated State Federations of Labor and all Central Labor Bodies and all national and international unions and Federal and local labor unions affiliated directly with the A. F. of L. of the "decision" of the convention "in awarding jurisdiction of the beer drivers to the Teamsters Union, transferring beer drivers to the Teamsters Union", and advised these unions "to see to it that the decision of the A. F. of L. was complied with and carried out." Green and the Federation went further. The trial court held:

> "Finding of Fact 39. The Federation further advised state federations of labor and central labor bodies to suspend and expel all local brewery workers unions

affiliated with state federations of labor and central labor bodies, if said local brewery workers' unions did not comply with the decision of the Executive Council and the Convention of 1933 in awarding jurisdiction of the beer drivers to the Teamsters Union and transferring beer drivers to the Teamsters Union" (R. 1683).

"Finding of Fact 40. The said Federation, by letters written by William Green as President of said Federation, advised brewery owners who employed beer drivers who held membership in the Brewery Workers Union that in order to comply with the decision of the American Federation of Labor they should deal exclusively with the Teamsters' Union and not to enter into collective bargaining agreements with the Brewery Workers' Union but only to enter into collective bargaining agreements with the Teamsters' Union" (R. 1683-1684).

We have already seen that Tobin, president of the Teamsters Union, likewise put the "decision" into effect. (Petition herein, p. 11.)

Beck, the Teamsters' organizer in eleven Western States, who was charged with securing compliance with the A. F. of L.'s "decision" stated on the witness stand:

"I was simply acting on instructions of the General President to organize beer drivers" (R. 1390).

The General President was Tobin, President of the Teamsters, and Tobin's orders, according to Beck, were the result of the "decision" (R. 1381, 1390).

An analysis of Beck's testimony, too long to be quoted here, shows that Beck considered that he was not only carrying out the orders of the Teamsters Union but also those of the A. F. of L. (R. 1380-1420).

The court below found that these coercive acts were continuing and would be committed unless restrained (Find-

ing of Fact 61, R. 1689; Conclusion of Law 19, R. 1692). Neither the A. F. of L., the Teamsters Union, or Green or Tobin have ever withdrawn their notifications to national and international unions, state and central labor bodies, Federal unions and locals, etc., that the "decision" must be observed.

Lastly, *since* the judgment below, Green, as president, has notified the Brewery Workers Union that unless it submits to the "decision" it will be suspended (R. 2824). In the face of the above, we ask how can it be contended that the decision of the A. F. of L., as interpreted by Green, president of the A. F. of L., and Tobin, president of the Teamsters Union, and as enforced by them, is anything other than an outright order of transfer of the beer drivers from the union of their choice to the Teamsters Union?

Finding of Fact 36 to the effect that 99.7% of the membership were in favor of remaining in the Brewery Workers Union (R. 1682) has not been disturbed by the court below. No testimony was submitted by the A. F. of L. or the Teamsters that the number of brewery workers desiring to remain in the Brewery Workers Union was any lesser percentage. This Court, therefore, must face fairly the fact that the decision below thwarts the desires of 99.7% of the Brewery Workers to have the Brewery Workers Union as representatives of their own choosing in labor matters.

III.

Nature and Structure of the A. F. of L.

The A. F. of L. is composed of the following types of organizations:

(1) Local trade and Federal labor unions.

(2) Local central bodies.

(3) State federations of labor.

(4) Departments.

(5) National and international unions.

Over these five bodies the powers of the A. F. of L. vary. Local trade and Federal labor unions, central labor bodies, State federations of labor and departments are chartered directly by the A. F. of L. and are directly subordinate to the A. F. of L. Over these bodies the A. F. of L. possesses extensive membership powers. As to national and international unions, mere certificates of affiliation are issued by the A. F. of L. since national and international unions are autonomous, self-governing, independent entities and the Federation has no membership control over them whatever. A recent study of the nature and structure of the A. F. of L. is set forth in the International Juridical Association *Bulletin* of August 1936, Vol. 5, No. 2 in confirmance of the above.

The trial court in Finding of Fact 3 (R. 1672) held that at the time of its affiliation with the A. F. of L. in 1887 the Brewery Workers had organized the brewery industry and thus had an established trade jurisdiction under the A. F. of L. as against any other union over all brewery workers, including beer drivers. It also found that the Teamsters Union did not, at the time of its organization, include in its membership beer drivers. (Finding of Fact 6, R. 1672.) Likewise the trial court found as a fact that when an international union became affiliated with the A. F. of L., the constitution of the A. F. of L. guaranteed two specific things: First, jurisdiction over all workmen doing the work of the specific craft or *occupation* covered by the organization; secondly, complete autonomy to the international over all of its internal affairs, and further, that no right of any kind would be sacrificed or lost by a

national or international union in joining the said Federation (Finding of Fact 8, R. 1673).

The suggested role of the Federation (by the court below) as a dominant, all-powerful body is repudiated by a number of events that occurred in the early days of the Federation. Thus as far back as 1894 President Samuel Gompers of the A. F. of L. stated in "The American Federationist", the monthly magazine of the A. F. of L.:

> "In becoming affiliated with the A. F. of L. there is no loss of any right that members or unions surrender. Their autonomy and independence are guaranteed and maintained. * * * We assure all that the Federation is comprised of too sincere unionists either to encourage or allow any infringement of trade rights" (R. 1466).

President Gompers in 1908 undertook to answer the specific question herein as to what authority the A. F. of L. exercised over an affiliated international union by stating:

> "The A. F. of L. guarantees to each affiliated organization absolute autonomy and independence in the conduct of its own affairs * * * Each affiliated organization is sovereign unto itself and its trade and internal affairs * * *. Each national or international union is protected in its particular field against rivals and seceders and yet without a loss of any right which any national or international union inherently had *prior to the affiliation* to the A. F. of L" (R. 818-819). (Italics ours.)

When Mr. Gompers testified in *Gompers* v. *Buck Stove & Range Co.*, 33 App. D. C. 516, he stated under oath that:

> "No national or international union is subordinate to the A. F. of L. They are sovereign entities in themselves" (R. 1257).

In the 1935 Convention of the A. F. of L. when the question arose of organizing the mass production industries

into large industrial unions and issue certificates of affiliation to them, the Convention refused to do so because it might violate the prior contracts of affiliation of international unions already affiliated. The Convention decided:

> "The convention could not have done otherwise than reaffirm the rights and jurisdiction given to the national and international unions which had been chartered by the American Federation of Labor, many of which had become international unions before the Civil War and had maintained a continuous existence since that time. It was principally these great international unions which had brought the American Federation of Labor into existence. When the American Federation of Labor was organized, and as unions accepted charters, and when national or international unions have been organized since 1881, a *contract* was entered into between the American Federation of Labor and the national or international unions. This contract called for loyalty to the purposes and policies of the American Federation of Labor. In return the national and international unions were guaranteed two specific things, first, jurisdiction over all workmen doing the work of the specific craft or *occupation* covered by the organization, second, guaranteeing to national and international unions complete autonomy over all its internal affairs. The American Federation of Labor could not have been organized on any other basis between the national and international unions and the Federation itself recognized that where a *contract* is entered into between parties it cannot be set aside or altered by one party without the consent and approval of the other" (R. 853-55). (Italics ours.)

President Gompers said on this subject:

> "The American Federation of Labor has made it the cardinal principle to declare, maintain and secure the autonomy of every trade *and labor* union in the exercise of their right to regulate the matters connected with their respective trades and the transaction of their

> business uninterfered with by any 'supreme', 'grand', 'mysterious' power." (Reed, "Labor Philosophy of Samuel Gompers", p. 143) (Italics ours).

Up until the decision of the court below no one has suggested that the A. F. of L. has power to control the membership of its affiliated international unions. Thus Groat in "Organized Labor in America" states:

> "When internationals claim jurisdiction against each other there is no control authority (in the Federation) to act as peacemaker" (p. 426).

Professor Jaffe likewise states:

> "The Constitution of the Federation does not specifically provide any machinery for settling jurisdictional disputes." (Yale Law Journal, 1940, p. 432.)

The concept of the court below that the A. F. of L. is a vast reservoir of power is repudiated by President William Green, himself, who publicly stated that the relationship of an affiliated international to the A. F. of L. "is like that of the States to the Federal government." The court below calls Green's conception "far-fetched" (R. 2780). President Green went on to say that the A. F. of L. has "no power of compulsion" over these unions (Washington Post, March 27, 1940).

As far back as 1902 the Convention of the A. F. of L. disclaimed entirely any power to settle even so-called jurisdictional disputes (we contend the present is not such a dispute). The Executive Council there said:

> "The A. F. of L. has only limited power in the settlement of these disputes. It claims no authority to interfere and any action which it takes is voluntary. The Executive Council, however, has, during the past year, repeatedly offered its services to unions engaged in controversies of this nature, and has in every case en-

deavored to bring about an amicable arrangement and a satisfactory settlement of these difficulties" (R. 518).

In 1905 the Convention of the A. F. of L. reiterated the principle that the role of the A. F. of L. was that of mediator, and that it would not even undertake the work of mediator unless the unions involved would agree in advance in writing to abide by the decision rendered (R. 1631). In contrast to the unhappy "implied power" theory of the court below, Samuel Gompers, in a full statement on the matter before the A. F. of L. Convention in 1907 stated:

> "We must bear in mind that in the last analysis we dare not depart from the true conception of the fact that to the international trade unions belongs all power not specifically delegated to our Convention" (R. 1682-1683).

In contrast to this is the statement of Justice Miller below that the Brewery Workers Union, when it joined the A. F. of L., "reserved no rights or powers affecting its jurisdiction over membership or limiting the power over that subject *except to the extent* that they are set forth in the constitution and the charter" (R. 2779) (Italics ours).

President Gompers, in his 1907 statement, specifically disavowed any such implied power in the A. F. of L. to settle jurisdictional disputes, from which it is obvious it had no power to make an outright transfer of men. He held that the A. F. of L. could only have this power by an *express* amendment to the constitution, and said that even then such an amendment should not be adopted unless not only the delegates at a Convention of the A. F. of L. but "the rank and file of the men who labor in their local unions" had voted upon it. He proposed the very question to be presented to them:

> "Shall the A. F. of L. undertake to decide finally questions of jurisdiction between organizations and en-

force the same, even to the extent of the revocation of a charter held by an international union (should it fail to abide by a decision rendered) and the reorganization of such an international union" (R. 1082-1085).

President William Green, likewise, in the hearings before the Committee on Labor, House of Representatives, 76th Congress, Volume 6, page 1801, wrote Mr. August Busch, President of Anheuser-Busch, Inc., with respect to the jurisdictional dispute which came before this Court in *U. S.* v. *Hutcheson,* No. 43, decided February 3, 1941, — U. S. —, as follows:

"Washington, D, C.,
June 27, 1939.

"August A. Busch, Jr.
Anheuser-Busch, Inc.:

"I have exhausted all efforts at my command to bring about a settlement of the controversy between machinists and carpenters organizations employed at your plant. I have urged a settlement of the controversy by the representatives of the two organizations involved. I regret that I lack authority to do more. I am willing, however, to render any service that lies within my power.

WILLIAM GREEN."

Mr. Adolphus Busch concluded his testimony by stating:

"It is clear from President Green's telegram that the A. F. of L. has no power to settle a jurisdictional dispute between two of its affiliated unions. A record of the controversy, published by the American Federation of Labor in 1934, makes it doubly clear that this central trades organization cannot, within its own powers, settle such controversies, or influence the parties to the dispute to settle them."

No exception has ever been taken to this statement by the A. F. of L. In fact, we go so far as to say that it is assumed

by this Court to be the truth and can be the only ultimate basis for this Court's decision in *U. S.* v. *Hutcheson, supra.*

IV.

Recent Declaration of Powers by the A. F. of L. in I. T. U. Case Directly Contrary to Decision Below.

We submit with deference that the court's decision is contrary to everyone's concept of the powers of the A. F. of L., and is in direct contradiction to what the Executive Council of the A. F. of L. construed its own powers to be in February, 1941 (R. 2802). It is well known that the International Typographical Union dropped out of the A. F. of L. in 1937 and that efforts on the part of both sides have been made since to secure its re-entry. The I. T. U. has consistently refused to reenter the A. F. of L. unless it received beforehand a disclaimer by the A. F. of L. of the precise powers which the court below holds the A. F. of L. has. The following statement [3] by a subcommittee of the Executive Council of the A. F. of L., ratified by the Executive Council itself, constitutes a recent construction of the powers of the A. F. of L. under its constitution, a construction which is newly discovered evidence of the most vital sort and which only came to attention of counsel subsequent to the lower court's decision.

"February 21, 1941.

Proposal of A. F. of L. Committee:

"To remove any misunderstanding or apprehension and to make clear and definite agreed upon interpretations and constructions of the constitutional provisions and laws of the A. F. of L. relating to the 'autonomy' of National and International Unions, to determine their jurisdiction, to be secure in their right to enact laws for the government of their members and

[3] The Typographical Journal, March, 1941, p. 306.

to the control of their funds and properties, the special committee of the A. F. of L. is prepared to recommend that the Executive Council, through its President, advise the I. T. U., its officers and members, as follows:

"1. That Section 2 of Article 2 of the American Federation of Labor guarantees complete autonomy to all National and International Unions, including the I. T. U., that the A. F. of L. is a 'Federation of National and International Unions' each and all of them self-governing; that the A. F. of L. is without authority to interfere with the internal affairs of such national and international unions or the government of its members and local unions; that the A. F. of L. has in no way any power, authority, control, equity or property right, direct or indirect, in the funds or properties of such national and international unions.

"2. That the Federation has never attempted arbitrarily to define the jurisdiction of national and international unions. Such is not the policy of the Federation. Its laws fully recognize the complete autonomy of national and international unions in this regard. On the other hand, the Federation does attempt to safeguard the jurisdictional rights of affiliated national and international unions and endeavors to bring about adjustments wherever conflict develops between national and international unions; that where the laws of the Federation to deal with the jurisdiction and government of unions and authorizes the Federation specifically to deal with such matters, they relate to directly chartered bodies, that is Federal trade and labor unions, City and State Federations of Labor.

"National and international unions are affiliated with the Federation by 'Certificate of Affiliation'. All other affiliated unions are 'chartered' by the Federation and are subordinate to the regulation and control of the Federation. While in the past, the terms 'Certificate of Affiliation' and 'Charter' have at times been used indiscriminately and synonymously, such use has been inadvertent and without authority and therefore

without binding influence.[4] It is intended that hereafter these terms shall be correctly used and properly applied.

"Under our laws, affiliated national and international unions have complete authority to regulate the conduct of their officers and members and to control and use of their funds and properties. The Federation has only authority to supervise, regulate and control the affairs, funds and properties of directly chartered local trade and Federal labor unions, city and state federations of labor" (R. 2802).

V.

Section 11 of Article IX of the Federation's Constitution Protects the Established Trade Jurisdiction of the Brewery Workers Union.

The trial court entered as part of the Declaratory Judgment the following:

"4. That under Section 11 of Article IX of the A. F. of L.'s constitution, the established trade jurisdiction of the Brewery Workers Union is further guaranteed and protected, and the defendant, the American Federation of Labor, is required, under its said constitution, to observe and protect the said trade jurisdiction of the Brewery Workers Union, more particularly its prior and exclusive right to organize beer drivers as against the claim of the Teamsters or any other organization to organize beer drivers" (R. 2690; see also Finding of Fact 14, R. 1674-5).

Justice Miller in the opinion below reversed this holding and held that there was no guarantee to protect an established trade jurisdiction of any affiliated national or inter-

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[4] Thus repudiating entirely the argument of the court below based on the word "charter" as distinguished from "Certificate of Affiliation". No more outright disavowal of the decision below could be found.

national union (R. 2781). Section 11 of Article IX provides:

> "No charter shall be granted by the A. F. of L. to any national or international union without a positive and clear definition of the trade jurisdiction claimed by the applicant, and the charter shall not be granted if the jurisdiction claimed is a trespass on the jurisdiction of existing affiliated unions, without the written consent of such union" (R. 492).

In seeking the meaning of a particular provision of a constitution it must be examined in the light of its origin, and the evils it was intended to remedy. Thus the facts leading up to the adoption of Section 11, Article IX were produced before the trial court (R. 492) but ignored by the appellate court (R. 2781). The Teamsters Union was admitted to the Federation in 1899. Immediately at the next A. F. of L. convention the Teamsters Union made claim by Resolution 16 that beer drivers be transferred to the Teamsters Union under the theory that a man should belong to the union of his trade (R. 492). At the same convention the Federation was confronted by Resolution 77 offered by the International Union of Machinists which demanded the immediate transfer of linotype operators from the International Typographical Union to the International Association of Machinists (R. 495), and that the Federation "declare once and for all whether it stands for trade autonomy or not" (R. 495). To the same effect was Resolution 125 asking for the transfer of the blacksmiths and firemen from the United Mine Workers to the Blacksmiths and Firemen's Union (R. 495). These three important resolutions immediately posed before the Federation in the year 1900 the question as to whether or not these three unions should be compelled to transfer certain portions of their membership to the other unions in adherence to a theory of strict trade autonomy. The three resolutions were referred to the

Grievance Committee and that committee reported to the Federation as follows:

"At each succeeding convention of the A. F. of L. we find that of the grievances presented for adjudication the great portion of them involve questions of jurisdiction which arise between bodies very often both being chartered by this body. These disputes become of a more aggravated character when it is demonstrated to your committee that each party has apparently been accorded jurisdiction over the field immediately in dispute by the A. F. of L. charter. *Particularly is this the case when the dispute involves one of what we may term the composite charters granted by the A. F. of L.*, and often, as a result, we find ourselves confronted with the undesirable task of limiting on the one hand what is popularly regarded as trade autonomy, or, on the other, of designating a composite organization, which, while in existence, has demonstrated its ability both to protect and advance the interests of its members to a remarkable degree. **In such cases we are strongly of the opinion that narrow conceptions of strict trade autonomy should give way to the policy, which, in our judgment, will best serve the interests of the workers immediately involved and best promote the power of the general movement. We desire further to say that this body cannot, in our opinion, presume by resolution or otherwise, to transfer bodies of men from one organization to another unless with their consent.**

* * * * * * *

"In line with these opinions we beg to submit the following recommendations with the hope that they will be concurred in and that they will be referred to the committee on laws with instructions to engraft their substance in the constitution of the A. F. of L.:

"First, that hereafter when granting a charter to organizations of a particular craft or calling, jurisdiction over which in whole or in part, has been granted by the terms of a charter already issued to another organization, the limits of the new jurisdiction shall, as

> far as practical, be defined by the Executive Council after consultation with the organization having the prior claim, and if such limitation be unsatisfactory to the new applicant no charter of the A. F. of L. shall be granted. In all cases, whether of the acceptance of limitations by the younger organization or the relinquishment of jurisdiction by the other, the same shall be secured, specifically stated in writing, from the proper officers of the interested bodies, and preserved for the future guidance of this Convention" (R. 497).

The above, embodied in Finding of Fact 14 (R. 1674) destroys the argument of the Court below.

The Committee's report was concurred in (R. 499) and the Committee on Laws adopted the Committee's report and wrote Section 11 of Article IX into the Federation's constitution as above set forth (R. 500).

Again, the established trade jurisdiction of an international union is further protected by Section 2 of Article XVII limiting the power of the Federation in issuing charters to Federal local labor unions so as to prevent a trespass on the Internationals' prior trade jurisdiction (R. 2186).

Section 11 of Article IX further explains the significance of references in the constitution to *labor* unions, which are not strict craft unions, as this Court knows. In the preamble of the constitution of the A. F. of L. it is expressly provided that:

> "We, therefore declare ourselves in favor of the formation of a real federation embracing *every* trade and *labor* organization in America organized under the trade union system."

Article I of this constitution provides:

> "This Federation shall be known as the American Federation of Labor and shall consist of such trade *and labor* unions as shall conform to its rules and regulations."

Article II, entitled "The Objects" says (R. 499):

> "Section 1. The objects of this Federation shall be the encouragement and formation of local trade and *labor* unions."

The recognition of "labor", as well as craft unions was made clear at the Second Convention of the American Federation of Labor held in 1887. An amendment was made to the Federation's constitution so as to include in the first Article, entitled "The Name" and in the second Article, entitled "The Objects", "*labor* unions as well as trade unions."

The record, page 486, of the second convention of the A. F. of L. held in 1887, shows as follows:

> "The convention then proceeded to the consideration of the report. The Preamble was first read. Mr. Block offered an amendment to the third clause of the Preamble: 'We therefore recognize the necessity of the existence of a thorough Federation.' Mr. Wilkinson offered an amendment to add at the end of the third clause: 'organized under the trade union system of organization.' Mr. Burtt offered a substitute to strike out in the first line of the second clause of the Preamble the words 'and labor' and to strike out all words after the word 'trade' in the last or third clause of the Preamble: *so as to have none but trade unions connected with the Federation.* After a very long and interesting debate a motion was made to close the debate. The convention then proceeded to vote on all the motions in their regular order. *Mr. Burtt's substitute was lost. Mr. Wilkinson's amendment was then adopted.* The question recurred on Mr. Block's original amendment. Mr. Block's amendment was lost. *The Preamble as amended by Mr. Wilkinson was then read and adopted.*"

This amendment to the Federation's Constitution was made so as to bring within the Federation labor unions such as industrial organizations as well as strictly craft unions.

Justice Miller's opinion makes no mention whatever of any of the above, but continually exalts the autonomy of the strict trade union at the expense of the autonomy of the composite "labor" unions which formed the Federation.

The amazing feature of the opinion below is that it reached its conclusion (a) on the basis of four fragmentary excerpts from the 1886 Constitution and from the term "charter" later rejected in favor of "certificate of affiliation" yet (b) after ignoring the significance of Section 11 of Article IX, it invokes that very Section as protecting the trade jurisdiction of the Teamsters (see opinion, R. 2790). If Section 11 of Article IX did not protect the Brewery Workers prior established trade jurisdiction when it was affiliated with the Federation against the Teamsters claim, why would it then protect the Teamsters' jurisdiction when the Brewery Workers having been illegally expelled (Conclusion of Law 8, R. 1691) later returned to the Federation in 1907.

Finally the court below gives no explanation whatever of the fact that pursuant to Section 11 of Article IX of the 1900 Convention prohibiting issuance of charters where to do so would trespass on the jurisdiction of existing affiliated unions, Resolution 220 of the 1900 Convention required the President of the A. F. of L., Samuel Gompers, to write to all international unions asking them, in view of the disputes as to jurisdiction between them, to file with the Federation a written declaration defining their claims of jurisdiction in order that this might be used as a guide in the issuance of future charters (R. 1886). In answer to this letter the Brewery Workers Union claimed jurisdiction over all brewery workers, specifically including beer drivers (R. 1887-1888). The Teamsters Union, in answer, referred to the 1900 decision of the Grievance Committee, approved by the Convention, to the effect that the A. F. of L. had no power

to transfer bodies of men from one union to another in the following language:

> "A recent decision of the A. F. of L. gives the United Brewery Workers jurisdiction over men engaged in driving beer wagons." (Plaintiff's Exhibit 32, R. 1886-1887).

The A. F. of L. did no such thing, its "recent decision" being simply the decision of the Grievance Committee above referred to (Present brief p. 35) that the A. F. of L. had no power "by resolution or otherwise to *transfer bodies of men* from one union to another."

VI.

Gross Errors in the Opinion of the Court Below.

The opinion below shows the wisdom of Rule 52(a) of the Rules of Civil Procedure prohibiting an Appellate Court setting aside Findings of Fact unless clearly erroneous. The basis of this rule is the impossibility, in the nature of things, of an appellate court acquiring from a printed record as accurate a knowledge of the facts as a trial court which has listened to them gradually unfold over a month's trial. It was inevitable, therefore, that the court below, "picking and choosing as it did among uncertain and conflicting inferences" (*Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 73) should fall into serious errors.

The Court below in order to sustain the validity of the order of transfer of 1933 by the Federation cited five sections from the 1886 Constitution, not the 1933 Constitution (R. 2780-1). The order of transfer was promulgated in 1933. Therefore, the validity of this order of transfer by the Federation was to be measured by the terms of the 1933 Constitution. The *trial* Court rightly used the clarified and amended 1933 Constitution as its guide in measuring the

power of the Federation, and in its declaratory judgment found that Sec. 11 of Article IX prohibited the Federation from entering the order (R. 1674-5).

The *Appellate* Court entirely ignored the 1933 Constitution and did not even refer to it. An analysis of the five sections of the 1886 Constitution upon which the court below relied will show that four of these sections have been clarified by amendments. Thus:

1886 Constitution.	*1933 Constitution.*
Art. I, Sec. 1: "This association shall consist of such Trades and Labor Unions as shall conform to its rules and regulations" (R. 479).	Art. I, Sec. 1: SAME (R. 2170).
Art. VIII, Sec. 1: "In all questions not covered by this constitution, the Executive Council shall have power to make rules to govern the same, and shall report accordingly to the Federation" (R. 482).	Now known as Art. IX, Sec. 8: "The Executive Council shall have power to make the rules to govern matters not in conflict with this constitution, or the constitution of affiliated unions, and shall report accordingly to the Federation" (R. 2178).
Art. VIII, Sec. 2: "Charters for the Federation shall be granted by the President of the Federation, by and with the consent of the Executive Council, to all National and International and Local bodies affiliated with this Federation" (R. 483).	Now known as Art. XIV, Sec. 1: "Certificates of affiliation shall be granted by the President of the Federation, by and with the consent of the Executive Council, to all National and International Unions and local bodies affiliated with this Federation" (R. 2186).
Art. VI, Sec. 3: "While we recognize the right of each trade to manage its own af-	Now known as Art. IX, Sec. 5: "While we recognize the right of each trade to man-

fairs, it shall be the duty of the Executive Council to secure the unification of all labor organizations'' so far as to assist each other in any justifiable boycott, and with voluntary financial help in the event of a strike or lockout when duly approved by the Executive Council.	age its own affairs, it shall be the duty of the Executive Council to secure the unification of all labor organizations, so far as to assist each other in any trade dispute'' (R. 2178).
Art. VIII, Sec. 3: ''Any seven wage workers of good character, and favorable to Trades Unions, and not members of any body affiliated with this Federation, shall have the power to form a local body, to be known as a 'Federal Labor Union', and they shall hold regular meetings for the purpose of strengthening and advancing the Trades Union movement, and shall have the power to make their own rules in conformity with this Constitution, and shall be granted a local charter by the President of this Federation, provided the request for a charter be endorsed by the nearest local or National Trades Union officials connected with this Federation'' (R. 483).	Now known as Art. XIV, Sec. 2: ''The Executive Council is authorized and empowered to charter *Local Trade Unions* and *Federal Labor Unions*, to determine their respective jurisdictions not in conflict with National and International Unions, to determine the minimum number of members required, qualifications for membership and to make rules and regulations relating to their conduct, activities and affairs from time to time as in its judgment is warranted or deemed advisable'' (R. 2186).

We discuss these sections as follows:

Article VIII, Section 1.—The court cites Article VIII, Section 1, *supra*, of the 1886 Constitution as a broad grant

of power to the Executive Council of the Federation, yet in 1933 when the order of transfer was passed Article VIII, Section 1 had been amended and was known as Article IX, Section 8 wherein the Executive Council's power was expressly limited so as to not make any rule "in conflict with the Federation's Constitution" or "the constitution of affiliated unions." The trial court found that this order of transfer violated Section 11, Article IX.

Article VIII, Section 2.—The court below ignored vital evidence in the record (R. 1939 *et seq.*) wherein the Federation at its Second Convention in 1887 revised its Constitution whereby Article VIII, Section 2 was changed, so that the Federation thereafter would not issue charters to National or International Unions, but would issue "Certificates of Affiliation". The International Typographical Union's delegates to the Second Convention of the Federation were instructed to bring about this change, so that it would expressly appear that the Federation had no dominion or control over the membership or property of National or International Unions, but rather that the unions were merely allied or federated together for the general benefit of the labor movement by a "Certificate of Affiliation". For the full history of the reasons of this very significant change, see Finding of Fact 11, R. 1673-1674, 487, 1979-91.

Article VI, Section 3.—The court below to further substantiate the power of the Federation to control the membership of National or International Unions cited Article VI, Section 3 (R. 2781) but failed to cite the entire section which flatly contradicts the inferences attempted to be deducted by the court. The court cites the section as if the Federation had been granted the power to unify and amalgamate unions. The sections cited above show that the Federation was merely given the power to attempt to unify all labor unions in a "justifiable boycott or in a trade

dispute". Article VI, Section 3 has been changed to Article XIV, Section 5 of the 1933 Constitution, *supra*, and this clearly explains the meaning of the section, namely, to attempt to unify all affiliated unions in a trade dispute with an employer.

Article VIII, Section 3.—Probably the most palpable error committed by the court is the citation of Article VIII, Section 3 of the 1886 Constitution, *supra*. In its opinion (R. 2781-82) the court cites this section to show that the Federation did not intend to protect the trade jurisdiction of National and International Unions and quotes this section as evidence of a broad grant of power to control the membership of National or International Unions. The court reasons that by reason of Article VIII, Section 3 of the 1886 Constitution the Federation could organize local trade unions and with their new organization they could trespass and violate the trade jurisdiction of National and International Unions, thus preaching "dual unionism" which is heresy in the modern labor movement. This view is refuted by Article XIV, Section 2 of the 1933 Constitution (formerly known as Section 3 of Article VIII), which in express language prohibits the Federation from issuing a charter to "Local Trade Unions and Federal Labor Unions and to determine their respective jurisdiction not in conflict with National and International Unions". In other words just as in Section 11 of Article IX which prohibits the issuance of new Certificates of Affiliation to incoming National and International Unions if it is a trespass on the trade jurisdiction of a prior affiliated union, so likewise in Section 2 of Article XIV the Federation cannot issue a charter to a Federal Local Labor or Trade Union if it is in conflict or violates the jurisdiction of an affiliated National or International Union. Further, the court ignored the proviso even in Section 3 of Article VIII

which provided that the request for a charter must be endorsed by the nearest local or national trade union official connected with the Federation, so that even in the 1886 Constitution before a new local federal trade union could be admitted it must have the endorsement of a national trade union. Article XIV, Section 2 of the 1933 Constitution, *supra*, expressly grants the power to the Federation to control the membership of federal local or trade unions. There is no such constitutional provision giving the Federation the power to control the membership over *national* or *international* unions. Mr. Morrison, the Secretary of the A. F. of L., explained that the reason why they left out national and international unions was because they were autonomous and self-governing (R. 1259).

Frank Morrison, Secretary of the Federation for over 50 years, testified that the *same identical* Certificate of Affiliation as given to the Brewery Workers is issued to federal labor unions, national and international unions, central labor bodies, state federations of labor and departments (R. 1259). There is no argument therefore in the Certificate of Affiliation standing alone. The difference in power that the Federation has over these various bodies is found in the provisions of the *Constitution* of the Federation (R. 1259) and has already been discussed. (Present brief, p. 25.)

The support the court found in the language of the Certificate of Affiliation Mr. Morrison explained away. For instance, the Certificate of Affiliation provides

> "should the International Union of United Brewery Workers be dissolved, suspended, or forfeit their Certificate of Affiliation then the person to whom this Certificate of Affiliation is granted or their successors, bind themselves to surrender the same with such other property as shall properly belong to this Federation."

Mr. Morrison testified that this particular proviso does not apply to national or international unions for the reason that national or international unions are autonomous and it only applies to federal labor unions by virtue of Article XVII, Section 13 (R. 1245). If the Federation has no control over the property of a national or international union and if the Certificate of Affiliation does not properly express the true meaning of the relationship over its property *a fortiori* the Certificate of Affiliation alone cannot be used as a valid and measuring guide for determining the power of the Federation over the membership of the national or international union.

VII.

The Importance of the International Working Agreement of 1915.

The court below was confronted with the 1915 Working Agreement under which the two unions adjusted their differences, the Teamsters Union conceding that "drivers, *chauffeurs* or stablemen" in the brewing industry came under the jurisdiction of the Brewery Workers Union. (This Court is asked to note the word "*chauffeurs*" thus destroying Justice Miller's "technological argument". See Opinion below, R. 2795.) In turn the Brewery Workers conceded that "drivers, *chauffeurs* and stablemen in the soft drink industry should come under the jurisdiction of the Teamsters. There were also other provisions in the Agreement. The court below criticized the Agreement, questioning whether it was "a mere working agreement without binding contractual character or on the other hand, had contractual binding effect." The court likewise criticized it because it had no expiration date stating that "considerations, both of the subject matter and of parties" were persuasive that the contract was not intended to be

permanent and so it was terminable by one of the parties.

In any event the court below held that the Agreement could not have a "binding, contractual character" as against the power of the A. F. of L. "to make a determination contrary to that reached in the agreement". This is a further statement by the court below of the complete supremacy of the A. F. of L. which makes a mockery of the autonomous (?) rights of the various international unions. This, too, in spite of the fact that the constitution of the A. F. of L. expressly contemplates that differences between internationals should be settled by agreement (Article III, Section 12 (R. 1707)). That section provides that the Convention will not even consider a grievance unless the parties have "previously held a conference and attempted to adjust the same themselves" (R. 1707). There are literally thousands of such agreements made between international unions and no one has even suggested that they must have the approval of the A. F. of L. The impossibility of the A. F. of L. supervising the thousands of agreements made each year between 140 internationals operating in 48 States is apparent. If these agreements are all subject to nullification by the A. F. of L. it follows that they are no agreements at all and hence the unions might as well not make them. Thus the court below saddles the A. F. of L. with policing the jurisdiction of 140 internationals. If the A. F. of L. took the decision below seriously it would naturally mean the disintegration of the A. F. of L. as a result of the immense burden of these tyrannical powers plus the resultant dissension. In contrast to the decision below, Frank Morrison, Secretary of the A. F. of L., stated that the A. F. of L. had nothing to do with these international working agreements (R. 1266-67).

The 1915 Working Agreement is still being observed by the Brewery Workers Union in its entirety and is being observed in all respects by the Teamsters Union except as

to the paragraph dealing with beer drivers. Confronted with the fact that the Agreement is being lived up to at the present time it is impossible to understand how the court below could hold the agreement, impliedly valid in all other respects, is invalid in the single solitary provision conceding jurisdiction of beer drivers to the Brewery Workers Union.

But in addition the court below has failed entirely to grasp the significance of the Agreement with respect to the 1933 decision of the Convention. After all, the Convention was supposed to have heard the dispute upon the facts and one of the salient facts was certainly the existence of the 1915 Agreement. The trial court, in Finding of Fact 33, left undisturbed by the court below and not even mentioned in its opinion, holds as a fact that the decision of the Executive Council

> "was arrived at not upon a full statement of the Brewery Workers Union's case, but upon a false statement of facts resulting from the denials by the said Tobin of the existence of the said International Working Agreement" (Finding of Fact 33, R. 1681-82.)

Likewise Finding of Fact 34 (R. 1682), undisturbed by the court below found that at the 1933 Convention Tobin requested the ratification of the decision of the Executive Council and again denied the existence of the International Working Agreement.[5] The trial court in its memorandum opinion deciding the case reiterated these two Findings of Fact (R. 1665). The Court there said "if the President of the Teamsters Union had admitted the 1915 agreement, the resolution passed by the 1933 Convention of the American Federation of Labor would probably have never been

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[5] The Agreement was actually ratified by the Teamsters Convention at Tobin's request (R. 477-478).

adopted and this litigation would, therefore, have been avoided" (R. 1665).

The importance of this is that the 1933 Executive Council and Convention made the "jurisdictional decision" not upon the theory of the court below that the Federation could redistribute jurisdiction *de novo* but upon the theory that historically and as a matter of right jurisdiction belongs to the Teamsters. In arriving at this conclusion the 1915 Working Agreement was obviously highly important evidence for the consideration of the delegates and many delegates admitted afterward that they would have voted differently if they had known Tobin's statement was untrue (R. 1575). Whatever the court below may say as to the right of the Federation to ignore the 1915 Working Agreement, it can hardly be deemed to have considered and disposed of it when, according to the undisputed Findings of Fact above cited, one of the parties denied its very existence. Since then Tobin has admitted in an affidavit filed in the trial court the existence of this Agreement (R. 40). Thus the Executive Council and the Convention acted on a false statement of facts.

VIII.

No "Labor Dispute" Being Involved the LaGuardia Act Does Not Apply.

The present suit sounds in contract and prays for a *mandatory injunction*, in the nature of a decree of specific performance, i.e., to require the A. F. of L. to live up to its contract of affiliation with the Brewery Workers Union and the Teamsters Union to live up to the International Working Agreement of 1915. The case is somewhat similar to *LaRoe* v. *Possehl*, 156 Misc. 476, wherein under the New York State Anti-Injunction Act the court held no "labor dispute" was involved where an individual member sued

to enjoin an unjust expulsion from a union in violation of his contract right.

The injunction herein does not enjoin Teamsters locals or Teamster members from unlawful conduct in Portland, Tacoma, San Francisco or elsewhere. Obviously the injunction could have no extra-territorial effect. The evidence of violence in these various places was not submitted for the purpose of obtaining an injunction restraining this violence but to show the *effect* of the illegal order, the loss of property rights, and that the order was not a mere decision but that, as carried out, it amounted to a coercive transfer of workers.

The situs, therefore, of the present "case" or "controversy" within the meaning of Section 13(c) of the La-Guardia Act is Washington, D. C., where obviously there is no controversy concerning terms or conditions of employment or the representation of persons in negotiating, fixing, etc., *terms or conditions of employment*. Not only is the present case *not* concerned with collective bargaining with a particular employer or set of employers, but there is no employer in the picture at all, proximate or non-proximate, bearing in mind the essential nature of the present suit as a suit against the principal officers of the A. F. of L. and the Teamsters Union to require them to live up to two contracts. In *Virginian Rwy.* v. *System Federation*, 300 U. S. 515, 562-563, this Court, noting that the suit requested a mandatory injunction to compel "treating with" and employees' organization held that the La-Guardia Act did not apply. The *Virginian Rwy.* case is certainly much nearer representation of men for collective bargaining purposes than the present case.

We reiterate that the present injunction simply restrains the named defendants, officers of the A. F. of L. and the Teamsters Union in Washington, D. C., from carrying out the illegal decision of the 1933 Convention. An inspection

of the injunction (R. 2689) will show that the Teamsters Union is only restrained from acts of coercion, etc., insofar as such acts are committed "on the ground of the said decision of the A. F. of L. of 1933" and from causing discharges because the particular person "failed to join the Teamsters Union under the illegal order of the A. F. of L. of 1933" (R. 2689). Likewise the named defendants are enjoined from encouraging acts of coercion and from organizational activities insofar as such acts and activities constitute "attempting to carry out" the decisions of the 1933 Convention, "by notifying any brewery employees of said decision" (R. 2690). A careful reading of the injunction will show that it is restricted entirely to activities concerned with the carrying out of the illegal 1933 decision. It does not restrain the Teamsters Union, still less their locals or their individual members from organizing beer drivers out in the "allowable area of economic conflict."

We feel, therefore, that no "labor dispute" is involved within the meaning of the LaGuardia Act. As a protection, however, petitioners obtained LaGuardia Act findings, which are criticized as to notice, evidence, etc., by the court below. Due to space limitations we cannot discuss here the validity of these findings. We can only rely on the succinct dissenting opinion of Mr. Justice Stephens (R. 2796) and further point out that there being substantial evidence in their support, Rule 52(a) prevents the court below setting them aside.

IX.

The A. F. of L. Should Rightly Be Estopped From Dismembering Petitioners' Union.

It is in evidence herein, with a specific Finding of Fact, that the A. F. of L. since 1887 has accepted dues from the Brewery Workers Union in amount totalling over $137,000 (Finding of Fact 60, R. 1689). This money, in part, has

been used to develop the A. F. of L. and even to develop the later incoming Teamsters Union. The court below, under these circumstances, should have held the A. F. of L. estopped to transfer the beer drivers when over such a long period of time it had accepted the benefits of their membership in the Brewery Workers Union. Particularly is this so when we consider that from at least 1913 to 1933 industrial peace reigned within the brewing industry already 98% organized. In addition, since 1915 the Teamsters conceded the beer drivers properly held membership in the Brewery Workers Union. The decision of 1933, out of a clear sky, surrounded with suspicious circumstances, produced in part by Tobin's fraud, should, in addition to other factors, have led the court below to a quick affirmance. This is particularly true when the proof herein shows the Brewery Workers Union have obtained for the beer drivers the highest wage scale of any motor truck drivers in the United States as shown by a recent survey of the United States Department of Labor (Plaintiff's Exhibit 120, R. 2046). The decision below seems unreasonable, oppressive, and certainly contrary to the best interests of the individual beer drivers who have asserted their rights herein.

Conclusion.

It is respectfully submitted that the petition should be granted and the judgment below reversed.

Respectfully submitted,

MARTIN F. O'DONOGHUE,
WILLIAM J. HUGHES, JR.,
THOMAS X. DUNN,
NICHOLAS J. CHIASCIONE,
Washington, D. C.,
Counsel for Petitioners.

(4840)

FILED
JUL 26 1941
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

No. 163.

JOSEPH OBERGFELL, PETER BOLLENBACHER, ALBERT J. KUGLER, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL AND SOFT DRINK WORKERS OF AMERICA et al.,

Petitioners,

vs.

WILLIAM GREEN, FRANK MORRISON, JOHN COEFIELD, THE AMERICAN FEDERATION OF LABOR and THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS et al.

BRIEF

In Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

JOSEPH A. PADWAY,
HENRY KAISER,
736 Bowen Building,
Washington, D. C.,
Counsel for Respondents.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.

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BRIEF

In Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

The Petition and Supporting Brief Violate Rules and Decisions of This Court.

The merest reading of the petition and supporting brief indicates that they do not comply with either the letter or the spirit of the rules and decisions governing the same. Indeed, they are so flagrantly violative of those rules and decisions as to compel the conclusion, and we reach it advisedly, of a grossly careless disregard for the process of this Honorable Court.

In the case of **Furness-Withy & Co. v. Yang Tsze Insurance Association,** 242 U. S. 430, to which express reference is made in Rule 38, this Court said, with reference to petitions and supporting briefs of the kind here involved, the following (p. 434):

> "We are not aided by oral arguments, and necessarily rely in an especial way upon petitions, replies, and supporting briefs. Unless these are carefully prepared, contain **appropriate** references to the record, and present with **studied accuracy, brevity, and clearness** whatever is essential to ready and adequate understanding of points requiring our attention, the rights of interested parties may be prejudiced and the court will be impeded in its efforts properly to dispose of the causes which constantly crowd its docket." (This Court's emphasis.)

The foregoing pronouncement is strikingly applicable to the instant petition and supporting brief. That respondents are unduly prejudiced is readily demonstrable. Under the order of the court below, granting a stay of mandate (R. 2818), the filing of the instant petition has the effect of indefinitely continuing the injunction issued by the trial court—an injunction which the court below unanimously declared to have been improvidently issued and whose broad and drastic restrictions the court below unanimously condemned.

We would not mention this if the petition and supporting brief tended even remotely to apprise this Honorable Court of "the facts essential to an adequate appreciation of the situation" (**Furness et al. v. Yang Tsze Insurance Association,** supra, at page 431) and to "state the case presented at the bar" (**Davis v. Currie,** 266 U. S. 182). Petitioners, of course, have the right to seek a review by this Honorable Court of any decisions or principles they believe were erroneously pronounced by the court below, and ordinarily the continuance of any injunction would in no man-

ner—as, indeed, it should not—diminish that right. But where, as here, the very decision of the court below is misstated, not to mention a distorted presentation of the record, then that right has manifestly been abused to the prejudice of other parties, and the petition should be forthwith denied (**Erie R. R. Co. v. Kirkendall**, 266 U. S. 185; **United States v. Rimer**, 220 U. S. 547).

Out of consideration for this Court's valuable time, we shall not undertake to point out the exceedingly numerous misstatements of fact and miscitations of record contained in the petition and supporting brief. Instead, we shall seek to dwell upon the more flagrant and more important inaccuracies therein contained, and we shall for the sake of convenience discuss them, as far as possible, in the same order that they appear in the petition and supporting brief.

Petitioners Misstate Basic Issue.

The leading impression that petitioners have sought to leave with this Honorable Court throughout their petition and brief is that the court below has ruled that the respondent American Federation of Labor has the power, under its constitution, to compel the transfer of men against their will from one union to the other. Nothing is further from the truth. The American Federation of Labor has never claimed such power; it has never exercised such power—it could not, even if it desired to—and, naturally, the court below never passed on the existence or validity of an unclaimed, unexercised and unexercisable power.

The basic theory of petitioners' complaint (R. 58) was that a specific action of the American Federation of Labor in 1933 was beyond its powers and constituted a breach of an alleged contract between the Brewery Workers' Union and the American Federation of Labor. Accordingly, it prayed that the trial court, "by mandatory decree, declare

that the action of the Executive Council of the American Federation of Labor, of May 2, 1933, and of the 1933 Convention of the American Federation of Labor, as hereinabove set forth, is illegal, void and of no effect. * * *" And it prayed further that defendants be enjoined from "carrying out and enforcing" the above specified action of the American Federation of Labor (R. 110). The action was a decision by the Executive Council, approved by the Convention, which vested jurisdiction of beer drivers in the Teamsters' Union in the following language:

> "In the case of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America v. The International Union of the United Brewery, Flour, Cereal and Soft Drink Workers of America, the Executive Council is of the opinion and decides that teamsters and chauffeurs in the brewery industry properly belong to and come under the jurisdiction of the International Brotherhood of Teamsters and Chauffeurs" (R. 356).

The power of the American Federation of Labor to render the foregoing decision, or, put otherwise, the power of the Federation to resolve and determine jurisdictional disputes between its affiliates is the basic issue in this case, as raised by petitioners themselves.

In response to that prayer, the trial court adjudged and decreed that the foregoing decision by the Executive Council and its adoption by the Convention be "declared illegal, null, void and of no effect" (R. 2688). Consequently, in addition to the foregoing declaratory judgment, it enjoined defendants from taking any steps in furtherance of the said decision of the Federation (R. 2689 et seq.).

From that judgment of the trial court respondents appealed to the Circuit Court of Appeals for the District of Columbia. The latter Court, concluding that "the American Federation of Labor acted within the scope of its dele-

gated constitutional power, and that no contractual or other rights of the Brewery Workers' Union were violated **by its decision of 1933**" (R. 2794) (emphasis supplied), reversed the judgment and dissolved the injunction issued by the trial court (R. 2797).

As an independent and additional reason for setting aside the injunction, the Court of Appeals for the District of Columbia concluded that the case involved a labor dispute within the meaning of the Norris-La Guardia Act, the requirements of which the trial court did not comply with. In other words, the court below made two distinct rulings: (1) that the 1933 decision of the Federation was lawful and, "this being true, there is no foundation for equitable relief or reason for judicial interference as regards any proper action by the Federation or the Teamsters' Union in carrying out that decision" (R. 2794), and (2) even if the Federation's 1933 decision was an unlawful act, nevertheless, the injunction was improvidently granted "because of lack of jurisdiction" as required by the Norris-La Guardia Act (R. 2777).

Thus, "the case presented at the bar" (**Davis v. Currie**, supra), the issues actually raised, and the precise determination of the lower court, are entirely clear. Yet, petitioners have seen fit, in the face of the rules and repeated decisions of this Court, to present this matter, composed of a cumbersome and complicated record of almost 3,000 pages, by way of petition for a writ of certiorari in a manner that can only obfuscate its true nature.

Petitioners state, "The real issue was the transfer of the 15,000 individual beer drivers, against their will, from the Brewery Workers' Union to the Teamsters by an order of the A. F. of L." (p. 21, petitioners' brief). This is untrue and unfounded.

No order of the American Federation of Labor in this

record, or anywhere else, presumes to direct any such thing. There is not a scintilla of evidence to establish that 15,000 men, or even one man, has been transferred or can be transferred against his will from the Brewery Workers' Union to the Teamsters' Union.

Manifestly, however, petitioners have no desire to limit themselves within the confines of the record in this case. They seek by sheer force of repetition[1] to convince this Honorable Court that the American Federation of Labor has, by its decision of 1933, compelled beer drivers against their will to transfer from the Brewery Workers' Union to the Teamsters' Union, with a consequent loss of valuable property rights, and to convince this Honorable Court that the court below has upheld this act of the Federation.

The fact is, of course, that the Federation's action in 1933 is no more than a declaration that a particular union —the Teamsters—is the only affiliate of the Federation that has the right to organize beer drivers. There is no compulsion to acquiesce in the declaration of the Federation, and failure to acquiesce will result in no property injury to any of the petitioners.

The Brewery Workers' Union has an absolute right to refuse compliance with the decision and leave the American Federation of Labor. If it does so, it takes with it its members, its property, and all its sick, death and unemployment funds; in short, it retains everything it has. Should the Brewery Workers' Union persist in flouting the decision of the Federation, and at the same time insist upon continued affiliation with the Federation, all the American Federation of Labor can do is to sever the Brewery Workers' Union from the family of the American

[1] Innumerable statements to the same effect as that quoted above appear throughout the petition and brief. See, for example, p. 2, twice on p. 4, three times on p. 5, p. 6, p. 8, p. 10, twice on p. 14, p. 15, p. 20, p. 21, p. 24, and elsewhere.

Federation of Labor. Should the Federation take this ultimate step, the Brewery Workers' Union would, of course, still retain intact all of its members, its funds, and its property.

The American Federation of Labor has never contended otherwise. It has no control over the membership, the locals, the contracts or other rights of the Brewery Workers' or any other International Union. For the refusal of any International Union to obey the decisions and decrees of the American Federation of Labor there can be nothing more than a severance of family ties. It has no enforcement powers. The American Federation of Labor takes nothing from such International, its members or affiliates, and, we repeat, it expressly disavows any right to take anything from them. To contend otherwise would be to deny the principle of voluntarism upon which the American Federation of Labor is founded, and to invade the autonomy of International Unions.

But even if the Federation should choose to ignore its own principle of voluntarism, it still would be helpless to enforce its own orders. The American Federation of Labor makes no pretentions to sovereign powers. The Congress of the United States has, in the National Labor Relations Act, 49 Stat. 449, 29 U. S. C. A. 151, guaranteed to workers their freedom of choice, and nothing that the American Federation of Labor would do or can do is superior to this basic statutory right. Regardless of whether the Brewery Workers' International remained in affiliation with the American Federation of Labor, or left the Federation of its own accord, or was expelled by the Federation, the beer drivers who are now its members could designate any union or representative, or no union or representative, as their collective bargaining agent, as was accurately recognized by the court below (R. 2794-5).

The true issue, of course, is whether the Federation has

the constitutional power to declare which of two contending affiliates has the right as an affiliate to organize a given class of workers. If, as the court below properly decided, the Federation has that power, then it matters not even if its exercise affects property rights. It is an elementary rule that the lawful exercise of power by a labor organization, even if it affects property rights, is nonactionable (**Brotherhood of Railway Trainmen et al. v. Williams**, 211 Ky. 638, 277 S. W. 500).

The issue of property rights arises only when and if it be decided that a labor organization has exceeded its powers. It must be shown that such excess of power has deprived a person of property rights in order to establish equity jurisdiction.

Accordingly, as an alternative argument, we urged before the court below that the action of the American Federation of Labor in 1933, even assuming it exceeded its power, did not deprive the plaintiffs of any property rights cognizable in a court of equity. Having sustained us in our major contention, namely, that the Federation acted within its power, the court below had no occasion to even mention this alternative contention.

Hence, although—as Mr. Justice Bailey ruled on the motion to dismiss (R. 30) the original bill of complaint (R. 1) —no "property rights in the real sense" (R. 57) are here presented, the entire issue of property rights is not now before this Court.

The "Questions Presented" Are Not Raised by Instant Record.

It follows from the foregoing that several of the major "questions presented" by the petitioners are not at all questions raised by this record. Thus, there is no occasion to ask this Court—as petitioners do in Question 1 (p. 5 of

petition)—whether the American Federation of Labor's constitution grants the Federation the power to "force a transfer of men from one union to another."

Similarly, Question 2 (p. 5 of petition) assumes what the record does not establish, namely, that the Federation has adopted an interpretation of its constitution which "compels the transfer of men from one union to another against their will, and thus destroys rights of liberty and property."

Only brief comment need be made as to the remaining alleged questions. Question 2 also contains an additional question, which refers to estoppel by acquiescence. Its applicability to this case is not clear to us, and certainly was not presented to the court below.

The third alleged question (pp. 5 and 6 of petition) is more argument than question. The court below has not passed on respondents' alleged "defense to the illegality" of any constitutional interpretation, since no such defense was presented.

Question 4 (p. 6 of petition) is, of course, no question at all, but a mere prolusory statement.

Question 5 (pp. 6 and 7 of petition) is more in the nature of a lengthy exhortation to a trial jury than a question presented to the Supreme Court of the United States on a petition for writ of certiorari. The alleged "fraud" of any individual defendant has never been, and certainly is not now, an issue in this case. The two "further" questions included by petitioners in Question 5 misstate the holding of the court below.

Question 6 (p. 7 of petition) does not involve a decision by the United States Court of Appeals for the District of Columbia of a "question of general importance" [Rule 38 (5) (c)]. "This Court does not ordinarily grant a writ of

certiorari to review evidence * * *" (**United States v. Johnston**, 268 U. S. 220). Moreover, the court below did not overturn any findings which were not clearly erroneous.

Question 7 (p. 7 of petition) includes four questions, several comments and one express contention—all dealing with the Norris-La Guardia Act. We have already pointed out that the court below expressly based its judgment on the merits of the case and dispensed with any necessity "to speculate as to whether sufficient showing could be made on new pleadings and a new trial so as to conform with the Norris-La Guardia Act" (R. 2794).

Petitioners' "Statement of Facts" Is Inaccurate and Incomplete.

It would be of little value to this Court to point to all of the many misstatements of fact and omission of important facts in petitioners' "Statement of Facts" (p. 8 et seq. of petition). We can safely rely upon the detailed opinion of the court below, which fully discusses all of the relevant facts. We note, briefly, petitioners' careful failure to mention the decisions of the Federation in 1903, 1904, 1905 and 1906, all awarding jurisdiction over beer drivers to the Teamsters, and all of which the Brewery Workers' Union refused to comply with, culminating in the expulsion of the Brewery Workers from the Federation in 1907, and its readmission only upon the clear understanding that jurisdiction over beer drivers was in the Teamsters (R. 609). The court below discusses this development and its implications on the instant case (R. 2786 et seq.).

We note, too, the many inaccurate and, we think, deliberately misleading references to the record made by petitioners in their "Statement of Facts." For example, petitioners assert that "the Chief of Detectives of Portland, Oregon, testified that the local police authorities were unable to give adequate protection, * * *" and in support

thereof refer this Court to "Finding of Fact 48, R. 1685-86" (p. 12 of petition).

A record reference to what a witness allegedly testified would, of course, normally be the testimony itself. The fact is that no such testimony was ever given. Characteristically, however, petitioners feel no restraint by this awkward fact. They blandly direct this Honorable Court's attention to a finding of fact made by the trial court, which the court below, after careful inquiry and discussion, found was without support in the record (R. 2775-76).

"Reasons for the Allowance of Writ" Are Inadequate.

The "reasons for the allowance of the writ" set forth by the petitioners are a continuation of their extensive arguments on the merits and, like the rest of the petition and brief, are replete with inaccurate and misleading record references. Although some four printed pages (pp. 13-17, incl., of petition) are devoted to these alleged reasons, and although these alleged reasons are numbered to the count of five, actually only one reason is presented, namely, the importance of the case. The remainder of the discussion is devoted, in effect, to a reassertion of and argument on the alleged errors committed by the court below.

And the one relevant reason that is presented is premised on the unfounded assumption that the order of the Federation forces "the transfer of men, against their will, from one union to another" (p. 14 of petition). We need not here repeat our remarks concerning the complete invalidity of that assumption.

We cannot complete our discussion of petitioners' alleged "reasons for the allowance of the writ" without remarking a most incredible device employed by petitioners in the course of discussing those "reasons." On

page 14 petitioners observe that the American Federation of Labor has, "in the case of the International Typographical Union, formally disavowed the holding of the court below," and in support thereof cite page 2802 of the record. Page 2802 of the record is a part of petitioners' petition for rehearing and stay of mandate filed with the court below. In that pleading petitioners quote from the Typographical Journal of March, 1941. Of course, this quotation was never offered at the trial and was never formally made a part of the record. It could not have been, because the trial was concluded over a year before that date. We shall soon show the erroneous construction given to this quotation by the petitioners. For the nonce, we emphasize the tactic of making a record reference which superficially appears to refer to the record upon which both the trial court and the court below made their decision.

The petitioners carry this device to an amazing extreme. On page 24 of their brief they state, "Lastly, since the judgment below, Green, as president, has notified the Brewery Workers' Union that unless it submits to the 'decision' it will be suspended (R. 2824)." Page 2824 of the record is part of petitioners' answer to a motion made by appellants below to vacate the order granting the stay of mandate. In the course of this answer, petitioners point to the steps that they think "would be undertaken" if the stay were vacated. One of the steps, according to petitioners' prophecy, would be

> "1. Suspension of the Brewery Workers' Union from the A. F. of L. The A. F. of L. has already notified appellees (since this Court's decision) that unless they submit they will be suspended."

The foregoing quotation, which is an unproved statement of counsel made in an argumentative pleading after the decision by the court below, is the basis for the statement as an established fact in petitioners' brief to this Honor-

able Court that "Green, as president, has notified the Brewery Workers' Union that * * * it will be suspended."

Improbability of Error in Decision of Court Below.

The quotation from the Typographical Journal aforementioned is set forth in full in petitioners' brief (pp. 31-33). Properly speaking, of course, what the American Federation of Labor has done elsewhere and at a date subsequent to the trial of this case is not a part of this case and should not have been presented to this Court by petitioners. However that may be, clear it is that on its face this statement in no way conflicts with any contention ever made by the American Federation of Labor in this case or elsewhere. The statement merely emphasizes the autonomy of each International affiliate over its own **internal** affairs. It does not say that the American Federation of Labor will not assume jurisdiction to settle jurisdictional disputes between two contending affiliates.

It is a fact, abundantly established by the record, that since its inception until the present day, a goodly portion of the Federation's energies and time is devoted to the resolution of these jurisdictional conflicts. And it is altogether fitting and proper that the duly designated officers of the Federation, who thus acquire a vast experience and expertness in settling such disputes, and not the courts, whose knowledge of the problems is necessarily limited, should resolve those conflicts.

In last analysis, that is the underlying issue in this case. Petitioners are seeking to remove this vital internal function of the American Federation of Labor to the civil courts. The court below reached its decision by applying the principle that courts will not ordinarily interfere with the internal affairs of voluntary associations (R. 2777).

This Honorable Court has consistently applied the same principle and has cogently stated some of the basic reasons for its development. Thus, in the leading case of **Watson v. Jones**, 13 Wallace 679, this Court said:

> "Nor do we see that justice would be likely to be promoted by submitting those decisions to review in the ordinary judicial tribunals. Each of these large and influential bodies * * * has a body of constitutional and ecclesiastical law of its own, to be found in their own written organic laws, their books of discipline, in their collections of precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that takes the ablest minds to become familiar with. It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case to one which is less so."

And again:

> "It is easy to see that if the civil courts are to inquire into all these matters, the whole subject of the doctrinal theology, the uses and customs, the written laws and the fundamental organization of every religious organization may, and must, be examined into with minuteness and care, for they would become in almost every case, the criteria by which the validity of the ecclesiastical decree would be determined by the civil court. This principle would deprive these bodies of the right of construing their own church laws, would open the way to all evils which we have depicted, * * * and would, in effect, transfer to the civil courts, where property rights were concerned, the decision of all ecclesiastical questions."

See, also, **Gonzales v. Roman Catholic Archbishop of Manilla**, 280 U. S. 1, 74 L. Ed. 1, which states that the same

considerations apply to "clubs and civil associations" as do to churches.

The analogy between the church and the American Federation of Labor, with respect to the basic principle of judicial noninterference, is complete. The bulky record in the instant case is largely composed of the "constitution," the "organic laws," the "precedents," the "usages," the "customs," and the like of the American Federation of Labor.

We think it is of especial significance that an administrative tribunal, expert in labor matters, has recognized the social value of the Federation's function in resolving jurisdictional disputes, and, though it is within its discretionary power so to do, has determined not to interfere with that function of the Federation.

In the Matter of Aluminum Company of America, 1 N. L. R. B. 530, the National Labor Relations Board, speaking of a jurisdictional dispute, said:

> "The Board feels that the question is not for it to decide. Such a question, involving solely and in a peculiar fashion the internal affairs of the American Federation of Labor and its chartered bodies, can best be decided by the parties themselves. The availability of the Board as a convenient forum for the airing of such problems would induce the parties to present them to the Board without first having made any real attempt to compose their differences among themselves. The consequent accumulation of cases on its docket would considerably hamper the work of the Board. Nor do we feel that the petitioner itself after a full consideration of the implications of its request would desire the Board to pass judgment upon such matters.
>
> "It is preferable that the Board should not interfere with the internal affairs of labor organizations.

Self-organization of employees implies a policy of self-management. The role that organizations of employees eventually must play in the structure established by Congress through that Act is a large and vital one. They will best be able to perform that role if they are permitted freely to work out the solutions to their own internal problems."

And again, in **The Matter of the Axton-Fisher Tobacco Co.**, 1 N. L. R. B. 604, the Board said:

"Both of the labor organizations involved in the instant cases are affiliated with the American Federation of Labor and possess charters from that body. In view of the structure of that body, the instant controversy is simply a dispute involving the internal affairs of a labor organization, here the American Federation of Labor. That dispute resembles the hundreds of other jurisdictional questions handled by the Federation and is clearly of a type which it has power to decide. There thus exists a body to which these two organizations belong and which has the authority to render a binding decision on the dispute between them. Under such circumstances, the Board is of the opinion that it should not intervene in the dispute for the reasons stated in the **Aluminum Company** case.

"It is perhaps unnecessary to point out that the internal dispute presented in these cases is merely one of many now existing within the American Federation of Labor and other organizations of labor. Some of these disputes, obviously difficult of solution, are far-reaching and fundamental to the labor movement; others are small by comparison. But in either case, it is preferable that in the light of the declared policy of Congress—'the exercise by workers of full freedom of association, self-organization and designation of representatives of their own choosing'—the Board should leave organizations of labor free to work out their own solutions through the procedure they themselves have established for that purpose."

CONCLUSION.

The opinion of the court below readily reflects its careful deliberation and thought for a period of almost a year. It is entirely consistent with all applicable authorities, including the precedents established by this Honorable Court. Where, as here, petitioners have failed completely in their burden of accurately presenting the case to this Court, the fact of improbability of error in the decision of the court below should remove any doubt as to the manner in which this Honorable Court should exercise its discretion in passing upon the petition for the writ. We respectfully submit that the petition be denied.

Respectfully submitted,

JOSEPH A. PADWAY,
HENRY KAISER,
736 Bowen Building,
Washington, D. C.,
Counsel for Respondents.